82-1762

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

TRUSTEES OF REX HOSPITAL, a Corporation; JOSEPH BARNES, and RICHARD URQUHART, JR.,
Cross-Petitioners,

v.

HOSPITAL BUILDING COMPANY,
Cross-Respondent.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Fourth Circuit erred by ignoring directly conflicting recent Second, Fifth and Sixth Circuit authority to hold that the trial court had "discretion" in submitting special interrogatories to the jury to omit a requested separate interrogatory concerning a "hotly contested" issue on which substantial evidence was introduced at trial?

2. Whether the Fourth Circuit erred by holding that under *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977), all of plaintiff's damages need not flow from that which made the conduct illegal if the antitrust violation was the proximate cause of any part of the damages claimed by plaintiff?

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CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Trustees of Rex Hospital, *et al.*[1] respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit entered on October 19, 1982 as to the issues raised herein should this Court grant the petition for a writ of certiorari filed by the plaintiff-cross-respondent, Hospital Building Company, in *Hospital Building Co. v. Trustees of Rex Hospital, et al.*, Dkt. No. 82-1633 (filed April 6, 1983).

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[1] Cross-petitioner Trustees of Rex Hospital ("Rex Hospital") has no affiliates, subsidiaries or parent companies.

OPINION BELOW

The opinion of the Court of Appeals for the Fourth Circuit reversing the award of judgment to cross-respondent and remanding the case for a new trial is reported at 691 F.2d 678 (4th Cir. 1982). The Court of Appeals' order denying cross-respondent's Petition for Rehearing and Suggestion for Rehearing En Banc was filed on January 7, 1983. The opinion and order of the Court of Appeals appear as Appendices A and B respectively to Hospital Building Company's petition for a writ of certiorari.[2] The District Court issued no opinion; its unreported order entering judgment for cross-respondent based on the jury's verdict is reproduced as Appendix C to Hospital Building Company's petition for a writ of certiorari.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit in favor of cross-petitioner Rex Hospital was entered on October 19, 1982. Cross-respondent Hospital Building Company filed a Petition for Rehearing and Suggestion for Rehearing En Banc that was denied on January 7, 1983. Hospital Building Company's petition for a writ of certiorari was filed April 6, 1983 and received by defendants-cross-petitioners April 8, 1983. This cross-petition for a writ of certiorari is filed pursuant to Rule 19.5 of the Rules of this Court. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) (1976).

STATUTORY PROVISIONS AND RULES INVOLVED

Rule 49(a) of the Federal Rules of Civil Procedure provides:

> (a) *Special Verdicts.* The court may require a jury to return only a special verdict in the form of

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[2] Appendices appearing in Hospital Building Company's petition for a writ of certiorari are cited herein as "Pet. App."

> a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

Section 4 of the Clayton Act, 15 U.S.C. § 15 (1976), provides in pertinent part:

> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

STATEMENT OF THE CASE

A. Proceedings Below

The full details of the lengthy procedural history of this case are set out in the petition for a writ of certiorari filed by cross-respondent and the brief in opposition thereto to be filed by cross-petitioners.

B. The Parties

Cross-petitioner Trustees of Rex Hospital is a non-profit corporation operating the Rex Hospital in Raleigh, North Carolina. The Rex Hospital is a non-profit hospital operating pursuant to state charter. Each of the Trustees of Rex Hospital is appointed by the Raleigh City Council and serves without compensation. Cross-petitioner Richard Urquhart, Jr. was the vice-chairman of the Board of Trustees of the Rex Hospital. Cross-petitioner Joseph Barnes was the executive director of the Rex Hospital.

Cross-respondent Hospital Building Company was a subsidiary of Charter Medical Corporation at the times relevant to this action. Charter operated a chain of proprietary for-profit hospitals throughout the country, including the Mary Elizabeth Hospital in Raleigh, North Carolina, through the Hospital Building Company.

C. The Facts

The facts concerning this case will be set forth fully in the Brief in Opposition to the Petition for a Writ of Certiorari. That statement is incorporated herein by reference and the following discussion reviews only those facts pertinent to a disposition of this cross-petition for certiorari.

In December 1970, Charter purchased the plaintiff, Hospital Building Corporation ("HBC"). HBC operated the Mary Elizabeth Hospital ("Mary Elizabeth") in Raleigh, North Carolina. Charter announced at this time that it intended to expand Mary Elizabeth to a size of 140 beds through the construction of a new hospital. Charter proposed to build the new hospital on a 6.9 acre site in Raleigh known as the "Tucker Site." (App. VII 3029-51.)[3]

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[3] As used in this cross-petition, "App." refers to the Joint Appendix on appeal; citations are to volume and page numbers.

State law required that any new hospital construction had to be approved by the Medical Care Commission, a state agency that was empowered to review applications for Certificates of Need and determine the adequacy of proposed sites for new hospital construction. HBC applied for a Certificate of Need on November 1, 1971. (App. VII 3029-51.) Rex Hospital opposed the application of the HBC for a Certificate of Need because the construction was unnecessary and would duplicate existing and planned facilities. (App. VII 2911.) After two hearings, a Certificate of Need was granted by the state on June 30, 1972 and Rex Hospital participated in an appeal to state court. (App. VII 2789, 2797.)

The appeal to state court was dismissed as moot on February 9, 1973 after the North Carolina Supreme Court ruled that the Certificate of Need law violated the North Carolina Constitution. (App. V 1915.) All opposition to the application of HBC for a Certificate of Need ceased at that time. Rex Hospital never took any further action to oppose the construction of a new hospital by the HBC in any way.[4]

On October 30, 1972, while the appeal in state court was still pending, Congress enacted the Social Security Amendments, 86 Stat. 1329 (1972), which added section 1122 to the Social Security Act. Section 1122 required local or state health-care planning approval of certain capital expenditures prior to allowing reimbursement for such capital expenditures under the federal Medicare and Medicaid programs. Approval was made on a case-by-case

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[4] In its petition for a writ of certiorari, Hospital Building Company alleges that a Blue Cross reimbursement policy somehow delayed construction. No such evidence was introduced at trial and the Fourth Circuit did not consider any Blue Cross policies in making the legal determinations relevant to this cross-petition.

basis in conjunction with state agencies designated by the Secretary of HEW.

In the case of North Carolina, no section 1122 approval was needed for the construction proposed by the HBC. (App. V 2057-61, 2117.) Acting on the erroneous belief that such approval was required, plaintiff filed an application for approval on March 16, 1973—over a month after the appeal to state court had been dismissed (App. IX 3701.) Approval was obtained on May 11, 1973, about the same time that Blue Cross approved the new hospital. (App. IV 1755; App. IX 3707, 3710.)

Even then, plaintiff did not begin construction of its hospital. As of June, financing was still available to the HBC from Hospital Investors, a real estate investment trust controlled by Charter. (App. I 375-76; App. III 944-45.) In July, interest rates began to climb and plaintiff claimed that it was not able to obtain any financing until the middle of 1977. (App. III 959; App. IV 1481-84.) By 1977, however, Charter had sold the Hospital Building Company to the Hospital Corporation of America which had promptly begun construction of the proposed hospital in January of 1977.

At trial, plaintiff's expert claimed that with financing plaintiff could have begun construction on or about June 1st, 1973 and opened on March 1, 1974. (App. IV 1605-06, 1643, 1736-37.) Plaintiff therefore claimed damages for a 51-month period of delay from March 1974 until June 1977, when the new owner of Mary Elizabeth, the Hospital Corporation of America, opened its new hospital. (App. IV 1605-06; 1643.) Specifically, plaintiff relied not only upon the alleged delay caused by the opposition to plaintiff's application for a Certificate of Need that lasted until February of 1973, but also upon (1) the delay caused by plaintiff's erroneous belief that approval of its facility was needed under

the new Congressional enactment of the Social Security Amendments, and (2) a further delay allegedly caused by the rise in interest rates in July of 1973—two months after plaintiff had obtained section 1122 approval. (App. I 316; App. III 921-29, 1172-75; App. IV 1579-1605; App. V 1875-77; App. VI 2516-17.)

Significantly, the expert's testimony that construction could have begun in 1973 rested upon the assumption that the hospital would have been built upon the Tucker site, which was the only land available to plaintiff in the 1971-1973 time frame. (App. III 1169; App. IV 1736-37.) This assumption among others was "hotly contested" at trial because the parties disagreed as to whether approval for a site as small as the Tucker site could have been obtained from the state.[5] (Pet. App. A at 20a.) Among the evidence introduced by defendants on the issue was testimony by plaintiff's own expert witness, who testified on cross-examination that the 6.9 acre Tucker site was "[w]oefully inadequate" for expansion—an essential prerequisite to state approval for a building site. (App. III 1263-65, 1273-74.)

Proof that the Tucker site would not have been approved by the state, together with other evidence that plaintiff was not prepared to build a hospital in 1972, created a major factual issue for the jury's consideration. Given an opportunity, the jury could have easily found that plaintiff had been unprepared to enter the Raleigh "market" in 1972, thereby destroying plaintiff's entire theory of liability and damages. Defendants also moved for a directed verdict and judgment notwithstanding the verdict on this issue. (App. I 298-309; App. V 1794-1883.)

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[5] The Raleigh Community Hospital was finally built by the Hospital Corporation of America on a 16.13 acre site obtained by the Hospital Building Company in 1974. (App. III 1002; App. VI 2316.)

Focusing specifically on this issue of plaintiff's preparedness, defendants requested that the trial court add to the several interrogatories already set forth on the special verdict form an additional special interrogatory dealing with the issue of preparedness. (App. VI 2578-80.) The trial court rejected this request and the special interrogatories submitted to the jury omitted any question relating to the issue of preparedness. (See Special Verdict form appended hereto.)

D. The Fourth Circuit's Decision

Although the judgment below was reversed by the Fourth Circuit, in discussing procedures for remand the Court of Appeals reached two erroneous conclusions that are in derogation of the decisions of the Supreme Court and in conflict with the holdings of other Circuit Courts of Appeal:

(1) The Fourth Circuit upheld the trial court's denial of Rex Hospital's right to a jury trial on the "hotly contested" issue of preparedness by holding that:

> [T]he question of whether to send a special interrogatory to the jury on this issue was within the discretion of the trial judge.

(Pet. App. A at 20a.)

(2) The Fourth Circuit also construed *Brunswick Corp.* v. *Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977), and held that defendants could be found liable for post-opposition delay caused solely by the congressional enactment of section 1122 and the subsequent rise in interest rates. The Court of Appeals held that under *Brunswick*:

> [A]ppellants cannot escape liability merely because the injurious delay was compounded by enactment of the § 1122 amendments and rising interest rates.

(Pet. App. A at 19a-20a.)

REASONS FOR GRANTING THE WRIT

A. In Order to Protect a Litigant's Constitutional Right to a Trial By Jury This Court Should Address the Conflict Between the Circuits Concerning the Use of Rule 49(a)

The Fourth Circuit found that the preparedness of HBC to enter the Raleigh "market" was an issue "hotly contested at trial . . . ." (Pet. App. A at 20a.) Evidence was introduced on the issue by defendants, including testimony from plaintiff's expert witness Conrad Taylor, the state official responsible for hospital site approval in 1972, who stated that the site would "not be approved" because it was too small. (App. III 1263-65, 1273-74.) The refusal of the trial court to submit a requested interrogatory on the issue was error and deprived defendants of their right to a jury trial on the critical issue of plaintiff's preparedness.

The holding of the Fourth Circuit, affirming the action of the trial court, is in direct, irreconcilable conflict with the holdings of the Fifth, Second and Sixth Circuits. *See Harville v. Anchor-Wate Co.*, 663 F.2d 598, 602-03 (5th Cir. 1981); *Simien v. S.S. Kresge Co.*, 566 F.2d 551, 555-56 (5th Cir. 1978); *Cutlass Productions, Inc. v. Bregman*, 682 F.2d 323, 327 (2d Cir. 1982); *Ajax Hardware Manufacturing Corp. v. Industrial Plants Corp.*, 569 F.2d 181, 187 (2d Cir. 1977); *National Bank of Commerce v. Royal Exchange Assurance of America, Inc.*, 455 F.2d 892, 898 (6th Cir. 1972).

In *Cutlass Productions*, for example, the Second Circuit held that "*in order to preserve the right of the litigants to a jury trial of all factual issues*, the wide discretion afforded the district court in submitting issues to the jury by way of special interrogatories is circumscribed by the requirement that they *clearly* present the

material fact issues raised by the pleadings and evidence." (682 F.2d at 327) (emphasis added.) The court held that the use of a special interrogatory form that "withdrew from the case one theory of defense asserted throughout the trial" was outside the discretion of the trial court even if the theory of defense was explained in the jury instructions. (682 F.2d at 328.) The Second Circuit concluded that the trial court's discretion

> cannot be exercised in a manner which withdraws from the jury's consideration a *valid theory of defense* upon which defendant has produced sufficient evidence.

(682 F.2d at 328) (emphasis added.) The Fourth Circuit, in affirming the trial court's exercise of "discretion," permitted the trial judge to withdraw the preparedness issue from the jury. (Pet. App. A at 20a.) This holding squarely conflicts with *Cutlass Productions.*

The law in the Fifth Circuit is in full accordance with *Cutlass Productions.* In the Fifth Circuit, the trial court's discretion is limited to making the decision whether to submit a special verdict form to the jury and the form of the questions put to the jury. *See, e.g., Culver v. Slater Boat Co.*, 688 F.2d 280, 306 n.41 (5th Cir. 1982) (*en banc*). Once it is decided to submit the case, all "controlling issues raised by the pleadings and the evidence" must be covered by the special verdict form and the determination as to whether a material issue is to be submitted is outside the discretion of the trial court. *Duke v. Sun Oil Co.*, 320 F.2d 853, 865 (5th Cir. 1963).

In *Harville v. Anchor-Wate Co.*, for example, defendants in a products liability action requested a special jury interrogatory and jury instructions on the issue of misuse. Evidence as to the misuse defense was introduced but the trial court refused to submit the requested

interrogatory. The Fifth Circuit found that introduction of the evidence on the issue raised "a fact issue as to misuse that should have been submitted to the jury" and held that "the district court erred in failing to submit the issue of misuse to the jury." (663 F.2d at 603.) *Accord, Chemetron Corp. v. Business Funds, Inc.*, 682 F.2d 1149, 1173 (5th Cir. 1982) (reversing a finding of liability because "the trial court failed to submit to the jury a material issue" in the special interrogatories even though jury instructions had addressed the issue). The rule is the same in the Sixth Circuit. *National Bank of Commerce v. Royal Exchange Assurance of America, Inc.*, 455 F.2d 892, 898 (6th Cir. 1972) ("clear that all material factual issues raised by the pleadings and evidence should be covered . . ."). These holdings are squarely in conflict with the decision reached by the Fourth Circuit in this case.

These recent cases sharpen the longstanding conflict between the circuits on this issue. *See, e.g., Healey v. Catalyst Recovery, Inc.*, 616 F.2d 641, 648 (3d Cir. 1980) (trial judge "has wide latitude in deciding which issues should be covered by special interrogatories."); *Perzinski v. Chevron Chemical Co.*, 503 F.2d 654, 660 (7th Cir. 1974) ("district court has considerable discretion as to the nature and scope of the issues to be submitted . . ."); *R.H. Baker & Co. v. Smith-Blair, Inc.*, 331 F.2d 506, 508 (9th Cir. 1964) ("district court acted within its discretion in declining to put the suggested question to the jury").

Resolution of this conflict by this Court is important because Rule 49(a) has long been recognized as an important tool that avoids needless remands and promotes judicial efficiency since valid portions of a verdict may be salvaged under the rule. *See, e.g., Jones v. Miles*, 656 F.2d 103, 106 n.3, 108 (5th Cir. 1981). At the same time, Rule 49(a) must be carefully administered to avoid depriving a party of its constitutional

right to a jury trial. The rule emerging in the Fourth, Third and Ninth Circuit Courts of Appeal allows the sacrifice of vital constitutional rights in the lesser interest of judicial discretion.

B. The Recovery of Damages That Do Not Flow From and Are Not Related to an Antitrust Injury Is Not Permitted by *Brunswick* and Cannot Be Allowed "Merely Because" Such Damages Occurred In Conjunction with An Antitrust Violation

The only antitrust injury claimed at trial was purportedly caused by an alleged bad faith opposition to the application of HBC for its Certificate of Need. Plaintiff contended that "but for" the opposition it would not have had to comply with the section 1122 amendments and would not have been faced with the rise in interest rates in July of 1973. Thus, plaintiff sought, and received, recovery for damages indisputably flowing from the section 1122 amendments and the rise of interest rates—not from the opposition which ended in February 1973. The Fourth Circuit explicitly adopted this "but for" proximate causation analysis in determining whether plaintiff could recover damages for the additional delay allegedly caused by the section 1122 amendments and the rise in interest rates. (Pet. App. A at 19a.)

Such an approach was rejected by the Supreme Court in *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977). There, this Court held that a mere "but for" causation analysis was error because that approach "divorces antitrust recovery from the purposes of the antitrust laws. . . ." (429 U.S. at 487.) Under *Brunswick*, the Fourth Circuit erred because "plaintiff must show *more* than that it suffered injury causally linked to the antitrust violation. . . ." *Handgards, Inc. v. Ethicon, Inc.*, 601 F.2d 986, 997 (9th Cir. 1979), *cert. denied*, 444 U.S. 1025 (1980) (emphasis added.)

The proper approach is to require proof of "injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." (429 U.S. at 489.) This standard "bases damages on the [defendant's] actual record of misconduct." *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 298 (2d Cir. 1979), *cert. denied*, 444 U.S. 1093 (1980).

In *Berkey*, a monopolist's price overcharge under section 2 was at issue. While it was clear that "excessive prices are 'injury of the type the antitrust laws were intended to prevent,'" the Second Circuit properly held that this characterization did not end the relevant inquiry under *Brunswick*. (603 F.2d at 297.) Plaintiff there could not recover the full amount of the differential between the monopolist's price and the price that would have existed had there been no monopoly but could only recover "to the extent that the price he paid exceeds that which would have been charged [by the monopolist] in the absence of anticompetitive action." (603 F.2d at 298.) Any differential in price between a purely competitive market and one in which the monopolist had acted lawfully could not be recovered.

The Fourth Circuit ignored the principles stated in *Brunswick* and applied in *Berkey*. As applied to this case, *Brunswick* and *Berkey* preclude an award of damages based on delay caused by the fortuitous enactment of section 1122 and the subsequent rise in interest rates because delay caused by these factors is not based on defendants' "actual record of misconduct." *Berkey*, 603 F.2d at 298. In essence, the Fourth Circuit read *Brunswick* as permitting recovery for delay caused by any factor proximately linked to the opposition merely because the opposition itself allegedly caused delay. (Pet. App. A at 19a.)

This holding makes nonsense out of the principle, affirmed in *Brunswick*, that damages must be "attribut-

able" to the "breakdown of competitive conditions" caused by the antitrust violation. *Chrysler Corp v. Fedders Corp.*, 643 F.2d 1229, 1235 (6th Cir. 1980). Plaintiff's claimed injury based on the enactment of Section 1122 and the rise in interest rates is not "antitrust injury" because the delay caused by these factors bears no relationship to the presence or absence of an antitrust violation. *See Blue Shield of Virginia v. McCready*, —— U.S. ——, 102 S. Ct. 2540, 2551 n.19 (1982) (holding that "the relationship between the claimed injury and that which is unlawful in the defendant's conduct" must be considered under *Brunswick*). The failure of the Fourth Circuit to undertake the full analysis required by *Brunswick*, as applied by this Court in *McCready*, the Second Circuit in *Berkey* and the Sixth Circuit in *Chrysler* justifies a full review by this Court of the principles to be considered under *Brunswick*.

CONCLUSION

Should this Court grant the petition for a writ of certiorari requested by the HBC, it should also grant review of the issues raised in this cross-petition.

Respectfully submitted,

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April 28, 1983

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

CIVIL ACTION FILE NO. 4047

HOSPITAL BUILDING CO.,
Plaintiff,

vs.

TRUSTEES OF REX HOSPITAL, a corporation;
JOSEPH BARNES; RICHARD URQUHART, JR.,
Defendants.

SPECIAL VERDICT
QUESTIONS TO BE ANSWERED
BY THE JURY
ON CLAIMS BY PLAINTIFF HOSPITAL BUILDING
COMPANY AGAINST THE DEFENDANTS

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1. Did one or more of the Defendants enter into a contract, combination or conspiracy with others to restrain interstate trade or commerce in the furnishing of medical-surgical hospital services in the Raleigh area?

Answer for each of the Defendants.

THE TRUSTEES OF REX HOSPITAL
("YES" OR "NO") _____

JOSEPH BARNES ("YES" OR "NO") _____

RICHARD URQUHART, JR.
("YES" OR "NO") _____

2. Did The Trustees of Rex Hospital enter into a contract, combination or conspiracy with others to monopolize

the market for medical-surgical services in the Raleigh area?

ANSWER "YES" OR "NO". ————————.

3. Did The Trustees of Rex Hospital attempt to monopolize the market for medical-surgical hospital services in the Raleigh area?

ANSWER "YES" OR "NO". ————————.

4. Did the acts of the Defendants, or any of them, taken alone or together with the acts of one or more co-conspirators, substantially and proximately cause injury to the business of Plaintiff Hospital Building Company?

ANSWER "YES" OR "NO". ————————.

5(A). Did the State of North Carolina compel the Defendants to commit the acts Plaintiff complains of under a clearly articulated and affirmatively expressed state law?

ANSWER "YES" OR "NO". ————————.

5(B). Did the State of North Carolina actively supervise the acts committed by Defendants of which the Plaintiff complains?

ANSWER "YES" OR "NO". ————————.

If your reply to both Questions 5(A) and (B) is "Yes," do not answer Questions 6 and 7. If your reply to either Question 5(A) or (B) is "No", proceed to answer Question 6.

6. Did the acts committed by the Defendants in connection with the Medical Care Commission's consideration of Plaintiff's certificate of need application and/or in connection with the appeal to the Superior Court of Wake County constitute an abuse of the adjudicatory or judicial process which was part of a larger plan to violate the antitrust laws?

ANSWER "YES" OR "NO". ————————.

If your reply to Question 6 is "No", do not answer Question 7. If your reply to Question 6 is "Yes", proceed to answer Question 7.

7. If your reply was "Yes" to Question 4, in what amount do you find that the business of Hospital Building Company was damaged?

	State Such Amount in Dollars and Cents or None
(A) Profits lost due to delay in the opening of the new hospital.	_____
(B) Profits lost due to increases in construction costs over a period of delay.	_____
(C) Profits lost due to increases in equipment costs over a period of delay.	_____

All twelve jurors must agree on each answer that you make to each of the above questions.

Signed:

_____

Foreperson of the Jury